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ABSTRACT

The study reported here focused on whether some special education disputes are resolved more effectively and efficiently by mediation than by a due process hearing, and whether parents and school officials feel satisfied about the process, outcome, and implementation of the agreement. Researchers analyzed requests for due process hearings filed between January 1, 1987 and June 30, 1988 in New Jersey, and received completed questionnaires from 53 mediated cases and 51 cases transmitted for a hearing, for a research sample of 104 cases representing about 30 percent of the total number of requests for a due process hearing during the 1-year period. Major issues in the 104 cases involved eligibility and identification, appropriateness of special education services, related services, and placement. The expectation that mediation would resolve certain types of issues more readily than other issues was not met. Parents lost in 55 percent of the cases that went to a hearing, but lost in only 25 percent of the cases that were mediated. Parents lost or compromised on more cases involving eligibility and identification, won more cases dealing with the appropriateness of special educational services, and won or compromised on 67 percent of the placement cases. Lay advocates were equally as effective as trained attorneys in assisting parents in resolving disputes. School officials tended to be more satisfied than parents with the outcome of mediation. Parents reported significant problems in the implementation of the mediation agreements. (Contains 28 references.) (JDD)

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The Efficacy of Mediation in the Resolution of Parent-School Special Education Disputes

by

Stanley J. Vitello

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* * *

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Abstract

Growing dissatisfaction with the use of due process hearings to resolve parent-school special education disputes has resulted in the use of mediation strategies in a number of states. The present study is designed to determine whether some types of special education disputes are more frequently resolved by mediation than by due process hearings. In addition, measures of participant satisfaction with the mediation process, outcomes and implementation were obtained. The results revealed no significant relationship between the type of special education dispute and the procedures used. Mediation resolved the majority of disputes. Both parents and school officials reported that the procedures were moderately impartial, satisfying and fair. However, parents reported significantly more emotional stress using the procedures. Parents and school officials reported moderate satisfaction and fairness with the agreements reached using the three procedures. Only the parents felt the cost was worth the use of all the procedures. Parents reported significantly more problems with the implementation of mediation agreements as compared to hearing decisions. They were significantly less satisfied with mediation implementation than the implementation of the settlement/hearing agreements. The implications of these findings are discussed.

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The Efficacy of Mediation in the Resolution of Parent-School Special Education Disputes

The Individual with Disabilities Education Act (IDEA) includes provisions which empower parents to participate in instructional decisions affecting their child. Parents are to be informed about their child's educational difficulties, the necessity of a diagnostic evaluation, the contents of the individualized education plan, and the reasons for a recommended placement. When parents disagree with a school official's decision they can request a due process hearing presided over by an impartial hearing officer. At the hearing parents may be represented by an attorney or parent advocate. In making their case parents can present evidence and cross-examine the school's witnesses. And they can appeal adverse decisions to the state's chief school administrator or to the courts.

Congress intended that these procedural safeguards would not only secure parent participation but also ensure procedural fairness and accuracy in fact-finding (Goldberg & Kuriloff, 1987). It was also intended that the due process procedures would foster a collaborative relationship between parents and school officials so that the best educational interests of the student with a disability would be served. Available evidence indicates that these good intentions have not been realized. Instead, the use of formal hearing procedures to resolve parent-school disputes in special education has had unintended, negative consequences.

The Adversariness of the Due Process Hearing

Empirical data supports the claim that the adversarial nature of due process hearings exacerbate negative feelings between parents and school officials and that these feelings carry over into future interactions.

Information gathered from the states in the U. S. Department of Education's Sixth Annual report to the Congress (1984) on the implementation of P.L. 94-94-142 revealed the adversarial nature of the hearings. Studies conducted by Budoff and Orenstein (1982) as well as Goldberg and Kuriloff (1987) provide anecdotal evidence on the adversariness of due process hearings. Parents described the hearing as an "absolute hell," "horrible" (Budoff & Orenstein, pp. 115,116). Others said it was "a traumatic experience," "It's like a war" (Goldberg & Kuriloff, pp. 19, 20). Research indicates that the ill-will and resentment that is created during the hearing carries over into unproductive future parent-school, parent-child, and school-child interactions (Neal & Kirp, 1985; Budoff & Orenstein, 1982; Strickland, 1982).

Hearings are Costly

Due process hearings result in high financial, instructional and emotional costs. Parents may be required to pay for legal representation, expert witnesses, and independent evaluations (Salend & Zirkel, 1984; Kammerlohr, Henderson 7 Rock, 1976). School districts also incur similar costs in the preparation of their case. It is estimated that two to three thousand dollars is spent for each due process hearing and these costs are increasing.

It may take more than two years before a dispute is resolved in the courts (Ekstrand & Edmister, 1984). The "stay put" requirement in the law means that a child must remain in his present educational placement, absent an agreement or court order for a placement in another setting. If the current placement is inappropriate the resulting loss in instructional time may be unrecoverable (Strickland, 1982; Budoff & Orenstein, 1982). Valuable instructional time is also lost when school staff must prepare for and attend

hearings. Due process hearings also have their psychological costs. Hearings are anxiety-producing undertakings for both parents and school officials. Disagreement leads to heightened tension between the parties. Conflict may be further exacerbated by the attorneys' confrontational stance (Kirst & Bertken, 1983).

Procedures are Unfair

The fundamental fairness of due process hearings has also been questioned. A number of states have used local education employees to serve as hearing officers. Parents have complained that the use of local education personnel violates the "impartiality" requirement under P.L. 94-142 (Mayson v. Teague, 1984). Local education personnel may have interests which conflict with their objectivity in a hearing. The claim is made that due process hearings benefit high socio-economic status (SES) families more than low SES families (Budoff & Orenstein, 1982). School officials are likely to be more deferential and more inclined to extend services to children of professional and relatively affluent parents (Weatherly, 1979). However, the data on this matter is inconclusive. Kuriloff (1985) found that regardless of SES parents who are articulate, persistent and knowledgeable about their rights, effective in making their case and who are able to retain an attorney seem to have a better chance in succeeding with their educational claims than those who do not have these attributes. And in a survey of 43 parents' reactions to hearings Goldberg & Kuriloff (1987) reported no differences in treatment across social groups. One study found that lower SES parents benefit from the use of the due process hearing (Kirst & Bertken, 1983).

Fairness in due process hearings has two dimensions. One deals with the opportunity for each side to present their case before the trier of facts

(e.g., the hearing officer). When this is done accuracy in fact finding is assured which serves as the basis for a fair decision. Another dimension of fairness pertains to how the parties feel about the hearing process itself, how they were treated and whether they perceive a just result. Kuriloff (1985) studied the effectiveness of each party's use of the due process hearing procedures toward affecting the outcome. This he referred to as "objective justice." Kuriloff's analysis of 160 hearing transcripts revealed that parents who called more witnesses, offered more exhibits, presented their cases more effectively and cross-examined the school's witness more thoroughly won their cases more often than parents who used these procedures less effectively. Thus, the use of the due process procedures insured objective justice which furthers procedural fairness. In order to obtain a measure of "subjective justice," how the parties were treated and their feelings about the outcome, Goldberg and Kuriloff (1987) surveyed 40 pairs of parents and school officials who went to a hearing. They found that a majority of parents felt the hearings were not fair and that the decisions did not accurately reflect the facts in the case. In short, parents were quite negative about the experience. On the other hand, most school officials felt the hearings were fair and the decisions accurate but only half expressed positive feelings about the process.

Dissatisfaction with the use of due process hearings to resolve parent-school disputes in special education has lead a number of writers to suggest alternative strategies for dispute resolution (Sacken, 1988; Ekstrand & Edmister, 1984; Folberg & Taylor, 1984; Salend & Zirkle, 1984). Mediation has been touted as the most effective procedure for resolving special education conflicts (Singer & Nace, 1985).

Mediation: An Alternative Dispute Resolution Strategy

According to Folberg and Taylor (1984):

> Mediation is an approach to conflict resolution in which an impartial third party intervenes in a dispute with the consent of the parties, to aid and assist then in reaching a mutually satisfactory settlement to an issue in dispute (7,8).

Although P.L. 94-142 does not require mediation as a means for resolving parent-school disputes, a comment to the regulations notes the success that a number of states have experienced with this strategy. To date, 35 states have reported that they have mediation policies and systems in place and another ten states are developing mediation systems (National Association of State Directors of Special Education, 1989). Mediation must be a voluntary, not mandatory option available to the parties. Parents who disagree with a school district's decision have a right to go directly to a hearing and need not first submit their claim to mediation.

Mediation is presumed to have a number of advantages over formal due process hearings in the resolution of parent-school disputes in special education. These include the improvement of communication between the parties, empowerment of the participants, appropriateness for the resolution of special education cases, and lower transaction costs.

Improved Communication

An inability to communicate has often prevented the direct negotiation of special education disputes between parents and school officials. Frequently, poor communication has occurred over a number of years each party blaming the other for refusing to engage in a dialogue. When a dialogue was attempted it broke down, one party accusing the other of an unwillingness to even listen. Consequently, feelings of distrust and anger develop between the

parties which thwarts any meaningful communication about the disabled child's educational needs. By the time the parties come to a mediation conference their relationship is at a crisis. An important function of a mediator is to assist the parties in reducing the obstacles to effective communication. Without improved communication negotiation cannot occur and a mutually satisfying agreement reached.

The reduction of past hostilities and the fostering of a cooperative, trusting relationship between parents and school officials is essential not only to the immediate formulation and implementation of an agreement but to future relationships between the parties. Given that a disabled child is entitled to schooling from the age of three to twenty-one, parents and school officials will have many occasions to discuss the child's educational program. Differences of opinion are likely to occur about what is appropriate, but they need not escalate into conflict if both parties act in good faith and acquire skills to negotiate their differences. In short, the mediation process is designed not only to resolve immediate disputes between the parties but to help them to build a working relationship to prevent future conflict.

Empowerment of the Participants

The ultimate goal of mediation is the preparation of a mutually acceptable written agreement. An agreement crafted by both parties, reflecting their separate interests, and signed indicating their mutual consent to abide by its terms. In theory, the participants have control of both the decision and its implementation. Research has shown that this self-determinative aspect of mediation positively affects user satisfaction and the willingness to comply with the agreement (McEwen & Maiman, 1981).

Although the mediator provides some structure to facilitate negotiation between the parties, the structure is flexible and the mediation process can be shaped by the participants. This is done as the participants, with minimal intrusion by the mediator, define the issues in dispute, voice their views and consider solutions to resolve their disagreements. Unlike hearings where the participation of the parties is usually passive and indirect since advocates, hearing officers or judges control the process; mediation requires active, direct, instrumental involvement by the participants (Goldberg, Green, & Sanders, 1985).

An assumption underlying mediation is that there exists a power balance between the contending parties. However, some have argued convincingly that the "alegal" character of mediation creates a constant risk of dominance by the more knowledgeable and powerful party (Edwards, 1986; Levine, 1986; Folberg & Taylor, 1984; Fiss, 1984). Handler (1986) argues that the school bureaucracy is much too powerful for most parents to overcome. Thus, there is an inherent imbalance in bargaining positions. And mediation may reinforce rather than correct the imbalance. Schools have the greater financial resources to obtain competent legal representation at mediation and more staying power to exhaust administrative appeals. Schools can invite a number of their professional staff to a conference which can be intimidating to parents. On the other hand, parents may be reluctant to press their demands fearing that their child may lose whatever services they now receive or become the victims of vindictive school personnel. Since mediation agreements are non-binding school officials can exert their power by not complying or complying slowly. There is no third party to order compliance and the only recourse available to parents is to go to a hearing.

Because of these power disparities there is speculation that mediation agreements represent capitulations by the less powerful party rather than objectively fair compromises. While mediation may provide the less knowledgeable, less articulate, and financially poorer client greater access to justice, they may receive second class justice.

Appropriateness for Special Education Disputes

Special education cases involve complex, substantive questions about why a child is not learning and what set of instructional variables are to be specified to enhance learning. Because the existing state of knowledge on these matters is uncertain and lacks predictability it becomes difficult, if not impossible, to base special education decision-making on accurate fact finding (Sacken, 1988; Kuriloff, 1985; Kirp & Jensen, 1983). The indeterminate nature of the facts leads experts providing testimony on the courses of a child's learning problem or what educational placement is appropriate to often disagree, muddling the substantive dispute (Handler, 1986). Special education disputes are not decided by finding the "right" pedagogical approach; there are a number of approaches which could be appropriate. This acknowledgement should reduce the level of potential conflict and set the conditions for bargaining and accommodation. Decisions arrived at between professional educators and parents should be considered flexible and experimental. Time should be allowed to test the efficacy of a particular educational program. If the program doesn't work there should be a renegotiation and reconsideration of alternative approaches.

Lower Transaction Costs

Transaction costs include the costs in time, money, and emotional energy expended in disputing. Mediation agreements can be reached in a day's meeting

and implemented quickly (Folberg & Taylor, 1984). Consequently, the loss of valuable instruction time is reduced for both students and the teaching staff. Because mediation need not require the presence of attorneys, the use of expert witnesses, and the recording of the proceedings considerable legal costs are saved. The cost of a state certified mediator ranges from 100 to 500 dollars a day. The non-adversarial nature of mediation should reduce participant anxiety and emotional stress.

Purpose of the Study

The purpose of this study was to evaluate the efficacy of the State of New Jersey's mediation system to resolve parent-school disputes in special education. More specifically, the study addresses two major research questions:

1. Are some types of special education disputes resolved more frequently by mediation than by due process hearings?
2. Do parents and school officials feel satisfied about the mediation process, outcome, and implementation of the agreement? More so than when compared to hearings?

The New Jersey Mediation System

In 1981, the Division of Special Education developed mediation procedures as part of its due process requirements. Unable to resolve a special education dispute at the local and/or county level the party initiating a due process hearing sends a written request to the State Department of Education, Division of Special Education. A copy of the request is also sent to the opposing party. The request is to specify as clearly as possible the issues in the dispute and the specific relief or action being sought. The Department of Education then conducts a "settlement conference"

as part of the due process procedures. In actuality, the settlement conference is a mediation conference conducted by an employee of the Department of Education, Division of Special Education. The mediators are special education professionals who receive both preservice and inservice mediation training provided by the state education agency.

Prior to the mediation conference the parties are required to exchange relevant records and information. If the parties are able to reach a resolution of the issues a mediation agreement is prepared and signed. Cases that are not settled by mediation are transmitted to the Office of Administrative Law (OAL) for a formal hearing. New Jersey is unique in that due process hearings are conducted by an administrative law judge. The judge will provide the parties one last chance to settle the dispute before the hearing is held. But if this is impossible the formal hearing will take place. After both sides have had the opportunity to present their case the judge will make a decision. The administrative law judge's written decision is final, binding on both parties and is to be implemented without undue delay.

METHOD

Sample

Permission was obtained from the New Jersey Department of Education, Division of Special Education, to conduct an analysis of all requests for due process hearings filed between January 1, 1987 and June 30, 1988.

During this period the 323 cases that were either state-mediated or transmitted for a Law hearing were selected for analysis. In all 160 cases were mediated; 163 cases were transmitted. Parents and school officials who

participated in the mediations and/or hearings were sent a questionnaire to assess their perceptions of the procedures used.

The research sample included an analysis of all mediated and adjudicated cases for which there was at least one questionnaire returned by either a parent or school official. The research sample consists of 55 mediated cases and 51 cases transmitted for a hearing. These 104 cases represent about 30 percent of the total number of requests for a due process hearing during the one year period. Among the 51 cases that were transmitted, 20 were settled by the judge prior to going to a formal hearing.

Instruments

A Case Coding Instrument (CCI) was developed to record the following information from the written mediation agreements, settlements, and hearing decisions: the issue(s) in the case, the petitioning party, party representation, the name of the mediator or OAL judge, and the outcome of the case. This instrument was constructed after a thorough review of the research on procedural due process in special education. The Due Process Coding Instrument (DPCI) used by Kuriloff (1985) was modified to reflect the questions raised by the literature review and the project's stated research questions. In effect, the CCI is an adaption of the DPCI used by Kuriloff (1985). In previously reported research the DPCI proved to be highly reliable in the study of due process hearings and its validity was affirmed by using a panel of legal experts (Kuriloff, 1985).

The types of complaints were grouped into four categories: (1) eligibility and identification (e.g., neurologically impaired, perceptually impaired, educable mentally retarded), (2) appropriateness of special

educational services (e.g., extended school year), (3) related services (e.g., counseling), and (4) placement (e.g., local public school, private school).

The petitioning party who brought the complaint was recorded as was whether the parents were represented by a private attorney, the public advocate, or a parent advocate. Typically, school districts were represented by their attorney, that too was coded.

The outcome of a case could result in a win for one party, the loss to the other, or a compromise between the parties. The determination about outcome was based on how the conflict was resolved on the central issue. For example, if the central issue was extended school year and the parents obtained this service the outcome was scored a win for the parents. If the parents wanted a private school placement and the school district recommended a public school placement and prevailed, the outcome was recorded a win for the school district. A compromise represented a bargain between the parties. For example, if the school offered counseling two hours a week and the parents wanted four hours for their child, and they agreed to three, this was scored a compromise.

Mailed Surveys. Four survey instruments were developed to measure the parent's and school officials' perceptions of the due process procedure used. These instruments were adapted from the questionnaires developed by Goldberg and Kuriloff (1987).

The Parent's Survey of Mediation consisted of 95 items, the School Officials' Survey of Mediation 90 items. Respondents were asked to provide information about the student (e.g., age, school placement) and themselves (e.g., family income, wealth of school district). The respondents were also asked to identify the relevant issue(s) in their case (e.g., classification,

placement). A number of Likert-items measured the respondents' perception of the mediation process, the effectiveness of their advocate, the mediation outcome and the implementation of the mediation agreement. There were also a number of open-ended questions to enable respondents to give their general reactions to the mediation process.

The Parent's Survey of Settlement/Due Process Hearing consisted of 57 items, the School Official's Survey of Settlement/Due Process Hearing 62 items. Respondents who received this questionnaire were asked to complete sections dealing with the mediation process which proved unsuccessful and then to evaluate the relevant due process hearing procedure used in their case (i.e. settlement or a hearing). Similar to the mediation survey a number of Likert items measured the respondents' perception of the settlement/due process hearing, the effectiveness of the advocate, the settlement/hearing outcome, and the implementation of the settlement/hearing decision. Also, open-ended questions were included to enable the respondents to comment on the hearing process.

Procedures

Typically, one or both parents and a school official (usually the Director of Special Education) participated in the due process procedures (i.e., mediation, hearing). The parents' names and mailing addresses were obtained from the case records filed with the New Jersey Division of Special Education. Case records were also used to identify the name and address of the local school district's director of special education. From an analysis of the records it was determined which cases were mediated and which were transmitted.

The appropriate questionnaire was sent to the participants in the due process procedure(s): 160 parents and school officials who resolved their disagreements using mediation; 163 parents and school officials who were unsuccessful at mediation went onto a hearing. After one month a follow-up mailing was made to all non-respondents with a request that they complete and return the questionnaire. In some cases telephone calls were made to school officials urging them to return the questionnaires. The final sample consisted of 104 cases for which at least one questionnaire was returned by either a parent or school official. Fifty-three percent (N = 53) of the cases resulted in mediated agreements, 18 percent (N = 20) in settlements, and 29 percent (N = 31) required a due process hearing. The questionnaires were verified for response completeness and correctness, then prepared for statistical analysis.

Two project investigators analyzed all the mediation agreements and accompanying questionnaires individually, using the Case Coding Instrument to record the pertinent information. This information was entered on the Mediation Agreement Form. They then compared their judgments to ensure reliability and to resolve coding disagreements. Issue identification was determined by reading the agreement and referring to the questionnaire(s) to determine what each side wanted. Based upon this assessment the central issue in the case was identified. Then the outcome was determined, a win for one of the parties, that is they got what they wanted; a loss, the party didn't get anything it wanted; or a compromise, a bargain was struck between the parties, each side got something they wanted in the agreement.

Similarly, using the Case Coding Instrument two investigators read and coded the written settlements and hearing decisions. As with the mediation

cases, issue identification was determined by reading the settlements and opinions along with the returned questionnaires which indicated what each side wanted. Based upon this assessment the central issue was identified. The outcome was recorded win, lose, or compromise in the settlement cases; win or lose in cases that resulted in a formal hearing.

RESULTS AND DISCUSSION

Case Outcomes

A total of 104 cases were analyzed. Fifty-three percent (N = 55) resulted in mediated agreements, 18 percent (N = 20) in settlements, and 29 percent (N = 31) required a due process hearing. This finding is consistent with other reported studies indicating about a 50 percent settlement rate using mediation (Budoff, Orenstein, & Sachitano, 1988; Nace & Singer, 1982).

Central issues were determined in 101 of the cases. They pertained to: (1) eligibility and identification, (2) appropriateness of special education services, (3) related services, and (4) placement. There was no significant relationship between the type of special education dispute and the procedures used to resolve the dispute [X^2 (6, N = 101) = 3.97, $p > .05$]. Mediation resolved the majority of disputes (see Table 2). As reported in other studies the most frequent request for due process hearings involved cases dealing with the students educational placements (General Accounting Office, 1989; Budoff & Orenstein, 1982). In the present study almost half the disputes (46%) were about placement, followed by eligibility and identification (28%), appropriateness of special education services (23%) and

related services (4%). The expectation that mediation would resolve certain types of issues more readily than other issues was not found. Across all four issue types mediation was the most frequently used strategy to resolve disputes. However, almost as many cases involving educational placements were resolved at formal hearings (N = 16) as at mediation conferences (N = 21).

Parents lost in 55 percent of the cases that went to a hearing but lost in only 25 percent of the cases that were mediated. When cases were settled by the OAL judge prior to a formal hearing parents lost in only 10 percent of the cases. The chi-square statistic yielded a significant relationship between the procedure used and party outcome (X^2 (4, N = 104) = 22.12, $p < .05$). Clearly, parents do better regarding the outcome of the case if they can reach a settlement prior to going to a hearing.

Parents lost or compromised on more cases involving eligibility and identification, won more cases dealing with the appropriateness of special educational services, and won or compromised on 67 percent of the placement cases. The chi-square statistic yielded a significant relationship between type of issue in dispute and party outcome (X^2 = (6, N = 100) = 12.18, $p = < .05$). School districts stand firm on eligibility and identification issues, supporting the judgement of their professional staffs. A similar finding was reported in the General Accounting Office Report (1989). On matters dealing with the appropriateness of a child's education there appears to be more room for discussion and compromise. In only two cases did the parents fail to get something they wanted in their child's IEP. When it came to placement issues

parents typically want private in and out of state settings, whereas schools recommended public school settings either locally or out of district. The outcomes on this issue were split between the parties.

Family annual incomes ranged from under $15,000 to over $90,000; 66 percent of the 59 families reported incomes between $15,000 and $60,000. There were no significant relationship between the family's income level and the frequency of the three procedures used (X^2 (12, N = 59) = 13.04, $p > .05$). And there was no significant relationship between the family's income level and procedural outcome (i.e., win, lose or compromise) (X^2 = (12, N = 29) = 10.04, $p > .05$). This finding lends more support to the argument that factors other than income per se are related to procedural outcomes (Kuriloff, 1985).

There was a significant relationship between the school district's factor group (DFG, a measure of socioeconomic status) and the three procedures used (X^2 (4, N = 69) = 19.36, $p < .05$). Lower and middle socioeconomic districts used mediation procedures significantly more often than higher socioeconomic districts. However, no significant relationship was found between the school's DFG and the procedural outcome. Lower and middle-income school districts may use mediation procedures more frequently because they are less costly than going to a hearing. Another factor is that fewer cases involving out of districts placements occurred in lower and middle-income school districts, therefore fewer hearings were required for a resolution.

In 43 of the 65 cases in which data was provided parents were presented by a lawyer or lay advocate. Although there was no significant relationship (X^2 = (2, N = 65) = 1.85, $p > .05$) between the presence of an advocate and outcome of the dispute, parents won more cases with an advocate. This finding is supported by a study conducted by the General Accounting Office (1989).

Whether the advocate was a lawyer or lay person made no difference in the outcome (X^2 (2, N - 43) = 2.85, $p > .05$). This finding suggest that lay advocates may be as equally effective or ineffective as trained attorneys in assisting parents in resolving disputes with the schools.

Party Perceptions of the Procedures Used

Key items in the questionnaire were selected to measure the parties' perceptions of the procedures used. Perceptions of the procedural process, outcome, and implementation were assessed. Procedural perceptions were determined within each party group (e.g. parents, school officials) and between the parties (parents v. school officials).

A chi-square statistic was used to measure the relationship between perceptions about mediation and the appeal procedures (settlement and due process hearings combined). The Likert six unit scale was collapsed to four units (1--strongly disagree to 4--strongly agree) to insure adequate cell size. Selected questions related to impartiality, satisfaction, fairness, and emotional stress.

Perceptions of the Procedural Process

Question: The (mediation) (settlement/hearing) process favored the (school) (parent).

There were no significant relationships within and between the parties on this question. There was moderate agreement expressed by both parties that the procedures were impartial even though the mediators were state department employees. One parent made the following comment: "The mediator made an unbiased decision, while taking the child into consideration." Another parent felt the mediator "forced the school to comply with the law and helped me to write an IEP that was a reflection of my child's needs." A school official

commented: "The mediator explained the options to the parents, supported them but did not take sides." But another school official felt "the mediator always attempts to indicate impartiality by favoring the parents.

Question: I was satisfied with the (mediation) (settlement/hearing) process.

There were no significant relationships within and between the parties on this question. There was moderate agreement expressed by both parties that they were satisfied with the procedures used.

Question: The (mediation) (settlement/hearing) was fair.

There were no significant relationships within and between the parties on this question. There was moderate agreement expressed by both parties that the procedures were fair.

Question: The (mediation) (settlement/hearing) was emotionally draining.

There was a significant relationship between the parents perception of emotional strain and the procedure used (X^2 (3, N = 62) = 8.47, $p < .05$). Parents reported that the settlement/hearing procedures were more emotionally draining than mediation. There was no significant difference among school officials. The between group analysis yielded a significant relationship. Parents reported significantly more emotional strain than school officials during mediation (X^2 (3, N = 53) = 15.96, $p < .05$) and settlement/ hearings (X^2 (3, N = 53) = 22.72, $p < .05$).

Overall, both parents and school officials perceive the three procedures used (i.e., mediation, settlement conference, and hearing) as moderately impartial, satisfying, and fair. Parents more so than school officials reported that all the procedures were emotionally draining. And, hearings were more difficult to endure than mediation conferences. This finding supports the research conducted by McGinley (1987).

Perceptions of Procedural Outcomes

Selected questions related to outcome satisfaction, fairness, and cost were analyzed.

Question: I was satisfied with the agreement.

There were no significant relationships within and between the parties on this question. Overall, there was moderate satisfactions with the agreements, and a trend for school officials to be more satisfied than parents with the mediation outcome (X^2 (3, N = 61) = 6.27, p = .09).

Question: The agreement was fair.

There were no significant relationship within and between the parties on this question. Both parties perceived the procedural outcomes as moderately fair.

Question: The agreement was worth the financial cost.

There were no significant relationship within the parent group as to the financial worth of mediation versus the settlement/hearing. Overall, 80 percent of the parents perceive all the procedures as financially worth it. However, within the school official group the relationship approached significance (X^2 (3, N = 56) = 6.56, p = .08). School officials tend to perceive the cost of settlement/hearing procedures incommensurate with the agreement. That is, going to a hearing is not worth its financial cost. Whereas, parents when compared to school officials tended to perceive both the costs of mediation (X^2 (3, N = 70) = 12.33, $p < .05$) and settlement/hearing procedures (X^2 (3, N = 48) = 11.67, $p < .05$) significantly more worth it than did the school officials.

Perceptions About Agreement Implementation

Questions were selected for analysis that pertained to implementation problems, satisfaction, and post-mediation relationships.

Question: There have been many problems implementing the agreement

There was a significant relationship between parents' perceptions of implementation problems and the procedure used (X^2 (3, N = 55) = 9.53, $p < .05$). Parents reported more problems in implementing the mediation agreements. When compared to school officials this finding held a revealing significant relationship (X^2 (3, N = 53) = 22.72, $p < .05$). For school officials there was no significant relationship between problems in implementation and the procedure used.

Question: I am satisfied with the implementation.

There was a significant relationship between school officials' reported satisfaction with the implementation and the procedure used (X^2 (3, N = 58) = 8.05, $p < .05$). School officials were more satisfied with the implementation of the mediation agreements. There was no significant relationship within the parents group. However, when compared to the school officials there was a significant relationship between party perception of satisfaction with implementation and the procedure used. Parents reported more satisfaction with the implementation of the settlement/hearing agreements (X^2 (3, N = 53) = 8.19, $p < .05$).

Question: Since the (mediation) (settlement/agreement), I find it easier to solve new problems with the school.

There was no significant relationship between the parent perception about solving new problems and the procedure used. But, there was a significant relationship among school officials (X^2 (3, N = 58) = 9.46, $p <$

.05). Again, school officials perceived solving new problems more difficult since mediation. When parents and school officials were compared a significant relationship was found (X^2 (3, N = 77)= 9.44, $p < .05$). School officials perceived solving new problems more difficult than parents after mediation. One school official commented: "The relationship with the parent was poor prior to the mediation and continues to be so today."

These findings indicate that school officials tend to be more satisfied than parents with the outcome of mediation and the implementation of the agreement. Their satisfaction can be attributed to the costs saved in not going to a formal hearing, a cost which they seek to avoid. Whereas, parents are willing to pay any price to obtain an appropriate education for their child. Also, considerable power rests with the school district in the implementation of the mediation agreement. And it appears that this power is used to delay or not implement the mediation agreement. Parents reported significant problems in the implementation of the mediation agreements. A finding recently reported by Mastrofski (1990), This undoubtedly accounts for school officials incurring problems with parents following the mediation conference and the lack of improvement in the parent-school relationship. Similar findings have been reported in studies conducted by the Justice Center of Atlanta in Georgia (1988) and Mastrofski (1990) in Pennsylvania.

Conclusion

The findings in this study on the efficacy of mediation to resolve parent-school special education in New Jersey school are mixed. Fifty-three percent of the disputes were resolved through mediation, thereby avoiding the possible transmittal of 53 cases to more formal hearing procedures. These disputes were resolved in less time (3 to 6 hours) than hearings and were

financially less costly to both parties. However, parents reported that mediation conferences were emotionally draining; although they were not as stressful as going to a hearing.

It is likely that parents are experiencing feelings of distress that have built up over a number of years in their interactions with school officials and not just stress attributed to the mediation conference. Nevertheless, more attention needs to be given by the mediator in establishing good communication between the parties so that a more positive, trusting relationship is developed. The educative function of mediation also needs to be emphasized so that the parties come to a better understanding of the other's point of view.

Schools need to adopt a more preventative approach to handling parent-school disputes in special education. Attention must focus on the level where disagreements first occur--the local school level--not at the level of state-managed mediation where disagreements have become increasingly tense and adversarial. The New Jersey Division of Special Education in adopting a recently revised special education code has placed more responsibility on local school districts to mediate disagreements between parents and school officials in special education. Research will be needed to determine whether this policy change improves parent-school relationships and reduces the request for state-managed mediation and due process hearings.

The recent reauthorization of the Individuals with Disabilities Education Act allows the Secretary of Education to award grants to states to develop model school-based ombudsman services to assist parents and school officials in the resolution of disagreements. The ombudsman would conduct independent investigations of the facts surrounding a particular dispute and

then present recommendations to the parties about how the dispute might be resolved. The ombudsman would intervene at the local school level. Handler (1986) proposes a "cooperative model" in the prevention of special education disputes. This approach recognizes the importance of parental understanding and active cooperation in decision making. Decisions to a particular problem are viewed as flexible which can be renegotiated between parents and school officials. Disagreements about a child's special education program are viewed as opportunities for reasoned communication, not adversarial conflict.

The concern expressed by several legal scholars (Edwards, 1986; Levine, 1986; & Fiss, 1984) that mediation puts school officials in a more powerful position than parents was supported by this study. This is particularly true when it comes to implementing the mediation agreement. The presumption that allowing the parties to construct their own agreement would lead to a greater willingness to comply with the agreement was not supported. Parents reported major problems in agreement implementation. A finding supported in the recently reported Mastrofski (1990) study of Pennsylvania's mediation system. There were delays and outright noncompliance. Given this absence of good faith it is not surprising that school officials reported difficulties in resolving new problems with parents after mediation.

Unlike the hearing process where parents can return to the Office of Administrative Law to enforce compliance there is no mechanism in the mediation process to ensure enforceability. In order to ensure that mediation agreements are enforced, mediation procedure must include time frames for the implementation of agreements, systemized follow-up agreements, and if necessary give mediators the authority to transmit the case to the Office of Administrative Law for enforcement.

Table 1

Frequency of Cases Resolved by Procedure Used by Type of Issue

Issue Type	Type of Procedure			
	Mediation	Settlement	Hearing	Total
Eligibility and Identification	16	6	6	28
Appropriateness of Special Education Services	13	3	7	23
Related Services	3	0	1	4
Placement	21	9	16	46
TOTAL	53	18	30	101

Table 2

Frequency of Case Outcome for Parents by Type of Issue

Issue Type	Case Outcome			
	Win	Lose	Compromise	Total
Eligibility and Identification	6	14	10	30
Appropriateness of Special Education Services	13	2	6	21
Related Services	1	1	2	4
Placement	18	15	12	45
TOTAL	32	38	30	100

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